

[*Carmack v. Tennessee Valley Authority*](#), 88-ERA-18 (Sec'y Dec. 6, 1990)

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U.S. DEPARTMENT OF LABOR

DEPUTY SECRETARY OF LABOR
WASHINGTON, D.C. 20210

DATE: December 6, 1990
CASE NO. 88-ERA-18

IN THE MATTER OF

RAY D. CARMACK,
COMPLAINANT,

v.

TENNESSEE VALLEY AUTHORITY,
RESPONDENT.

BEFORE: THE ACTING SECRETARY OF LABOR¹

ORDER TO SUBMIT SETTLEMENT AGREEMENT
OR OTHER CLARIFICATION

This case, arising under the employee protection provision of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. § 5851 (1982), is before me pursuant to the [Recommended]² Dismissal order issued by Administrative Law Judge (ALJ) Victor J. Chao on May 23, 1988. The order states: "Pursuant to the Stipulation of Dismissal executed by the Complainant, Ray D. Carmack, and Respondent's assistant general counsel, Justin M. Schwamm, Sr., this case is dismissed with prejudice."

No copy of a settlement was filed and it is not a part of the record. The Stipulation of Dismissal, May 19, 1988, merely states that Complainant and Respondent "agree and stipulate, evidenced by their signatures affixed below, that this proceeding should be dismissed with prejudice." This case cannot be dismissed unless the Secretary reviews and approves the parties' settlement, if any. *See Thompson v. United States Department of Labor*, 885 F. 2d 551, 558 (9th Cir. 1989); *Fuchko and Yunker v. Georgia Power Co.*, Case Nos. 89-ERA-9, 89-ERA-10, Secretary's order, March 23, 1989.³ It is not clear that a settlement

exists in this case. Although the filing of a stipulation might imply that the instant dispute has been resolved on mutually agreeable terms culminating in a settlement, it is also possible that Complainant requested dismissal of the proceeding without requiring anything in return from Respondent. If so, this case may be dismissed on the Stipulation alone. *See Scott v. American Protective Services, Inc.*, Case No. 89-ERA-35, Secretary's Final Order of Dismissal, April 26, 1990 (copy attached).

In order to clarify the existence of any settlement agreement, the parties are ordered to submit a copy of the settlement agreement to me for review. *See Macktal v. Brown & Root Inc.* Case No. 86-ERA-23, Secretary's Order, November 14, 1989. If the parties have not signed the settlement agreement itself, the parties shall submit a certification or stipulation, signed by all parties to the agreement, including the Complainant, demonstrating their informed consent to the agreement. In the alternative, if the Stipulation of Dismissal was not the result of a settlement, the parties shall submit a declaration to that effect. In either event, the parties shall respond to this order within thirty days of receipt.

SO ORDERED.

Acting Secretary of Labor

Washington, D.C.

[ENDNOTES]

¹ There is presently a vacancy in the office of Secretary of Labor. The Deputy Secretary is authorized to "perform the duties of the Secretary until a successor is appointed . . . 29 U.S.C. § 552 (1988).

² Under section 24.6 of 29 C.F.R., the regulation implementing the ERA, an ALJ is authorized to issue only a recommended decision, which must be reviewed by the Secretary before it becomes final. *See Cooper v. Bechtel Power Corp.*, Case No. 88-ERA-2, Sec. Order, September 29, 1989, slip op. at 1.

³ The ERA, 42 U.S.C. § 5851 (b)(2)(A), provides that "the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary *on the basis of a settlement entered into by the Secretary* . . . issue an order either providing the relief prescribed by subparagraph B or denying the complaint." (emphasis added).